?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 27.11.2018

Date of Reserving the Order
Date of Pronouncing the Order
23.11.2018
27.11.2018

*CORAM
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

+C.R.P.(NPD) (MD) No.877 of 2005
and
C.M.P.(MD) No.5790 of 2005

#Saravanan @ Ammaiappan
... Petitioner / Appellant /
Petitioner
~vs~

$1.Narayana Pillai (Died)
2.Madavan Pillai (Died)
3.M.Velammai (Sheelavathy)
4.M.Anantha Sree Padmanabha Pillai
5.M.Sivagami
6.M.Meenashi
7.M.Mathamai
8.M.Rama Lakshmi
9.M.Saravana Perumal Pillai
10.M.Rajeswari
11.M.Kaliammal
12.M.Karthikeyan
13.M.Vigneswari
14.M.Bhagavathiammal
15.Anantha Sree Padmanaban
16.N.Krishnan
17.N.Shylaja
18.N.Ponni
19.N.Meena
20.M.N.Kattiyammal ... Respondents /
Respondents
[R3 to R14 are brought on record as L.Rs. of the deceased R2 vide Court Order dated 04.04.2017 made in C.M.P.(MD) No.2937 of 2016. R15 to R20 are brought on record as L.Rs. of the deceased R1 vide Court Order dated 04.04.2017 made in C.M.P.(MD) Nos.7616 to 7618 of 2016]

PRAYER: Civil revision petition is filed, under Section 115 of the Code of Civil Procedure, to set aside the order, dated 29.11.2004, made in I.A.No.146 of 2004 in A.S.S.R.No.4307 of 2004, on the file of the Subordinate Court,

Padmanabhapuram.

!For Petitioner : Mr.V.M.Balamohan Thambi

^For Respondents : No appearance for R3 to R14
Mr.M.P.Senthil for R15 to R20

:ORDER

The civil revision petition is directed against the fair and decreetal orders, dated 29.11.2004, passed in I.A.No.146 of 2004 in A.S.S.R.No.4307 of 2004, on the file of the Subordinate Court, Padmanabhapuram.

2. Materials placed on record would go to show that the suit has been laid by the first respondent / plaintiff for partition and demarcation. It is seen that the Trial Court has granted the relief of demarcation alone in favour of the first respondent / plaintiff. Aggrieved over the Judgment and Decree of the Trial Court, the revision petitioner / second defendant had preferred the appeal. Inasmuch as there has been a delay of eight days in preferring the first appeal, the petitioner preferred I.A.No.146 of 2004 to condone the delay. The reason given by the petitioner for the delay is that as he was suffering from viral fever during the relevant point of time, the delay has occurred and it was neither wilful nor wanton and therefore, prayed for condonation of the delay so as to enable him to contest the plaintiff-s suit on appeal.

3. The above said cause projected by the petitioner for the delay has been challenged by the first respondent / plaintiff and according to the first respondent / plaintiff, the cause of illness projected by the petitioner is false and made only for the purpose of the case and it is stated that inasmuch as no decree has been specifically passed as against the petitioner / second defendant, he would not be aggrieved over the same and accordingly, prayed for dismissal of the petitioner-s application.

4. The Court below, on a consideration of the case putforth by the respective parties, finding that the cause of illness projected by the petitioner for the delay having not been established by necessary documents and also noting that the decree passed in the suit is not directed against the petitioner in specific, accordingly, chose to dismiss the application preferred by the petitioner. Aggrieved over the same, the present civil revision petition has been laid.

5. The decree has been passed for demarcation in favour of the first respondent / plaintiff in the suit by the Trial Court. Being aggrieved over the same, it is noted that the petitioner has preferred the first appeal. However, as the appeal could not be filed in time and the delay of eight days had occasioned in preferring the same, the petitioner had come forward with the present application for the condonation of the delay. The reason given for the delay is viral fever. No doubt, the same had been challenged by the first respondent / plaintiff contending that the above said cause is not

true. It is found that the petitioner has not placed any document in support of the cause projected by him for the delay. But, considering the delay of eight days in preferring the appeal and if the same is not condoned, it is noted that by way of the same, the petitioner would be put to irreparable loss and hardship and on the other hand, if the delay is condoned and the petitioner is given a fair chance to putforth his case in the appeal, in my considered opinion, by way of the same, no serious prejudice or loss would be occasioned to the first respondent / plaintiff. No doubt, the petitioner has not come forward with any acceptable proof, but considering the quantum of delay in preferring the appeal not being on the higher side and also noting that no serious prejudice as such would be caused to the first respondent / plaintiff in condoning the same, in my considered opinion, the ends of justice would be served by accepting the cause projected by the petitioner and resultantly, the civil revision petition is allowed and the fair and decreetal orders, dated 29.11.2004, passed in I.A.No.146 of 2004 in A.S.S.R.No.4307 of 2004, on the file of the Subordinate Court, Padmanabhapuram, are set aside. The application in I.A.No.146 of 2004 is hereby allowed. The Court below is directed to take the appal on file and dispose of the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

To:

The Sub Judge,
Padmanabhapuram.